

**LEWIS
AND
ROCA**
—LLP—
LAWYERS

E-Filed on 5/16/08

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004-4429
Facsimile (602) 734-3824
Telephone (602) 262-5756

Susan M. Freeman AZ State Bar No. 004199

Email: sfreeman@lrlaw.com

Rob Charles NV State Bar No. 006593

Email: rcharles@lrlaw.com

John Hinderaker AZ State bar No. 018024

Email: jhinderaker@lrlaw.com

Anthony W. Austin NV State Bar No. 10850

Email: aaustin@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA Commercial Mortgage Company,
USA Capital Realty Advisors, LLC,
USA Capital Diversified Trust Deed Fund,
LLC,
USA Capital First Trust Deed Fund, LLC,¹
USA Securities, LLC,²
Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**RESPONSE TO PBGC'S
OBJECTION TO PROPOSED
ORDER DISALLOWING AMENDED
CLAIM NO. 791 FILED BY THE
PENSION BENEFIT GUARANTY
CORPORATION**

Date of Hearing: April 17, 2008

Time of Hearing: 9:30 a.m.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Pursuant to Local Bankruptcy Rule 9021(b), the USACM Liquidating Trust (the "USACM Trust") responds to the Pension Benefit Guaranty Corporation's ("PBGC") objections to the USACM Trust's proposed order disallowing Amended Claim No. 791 filed by the PBGC (the "Termination Premium Claim") as follows:

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

LEWIS
AND
ROCA
LLP
LAWYERS

1 1. On April 17, 2008, after extensive briefing by the parties, this Court held
2 oral argument on the Termination Premium Claim. At the conclusion of oral argument,
3 this Court made an extensive oral ruling disallowing the Termination Premium Claim.

4 2. After the Court's ruling, the USACM Trust submitted a proposed order to
5 the PBGC disallowing the Termination Premium Claim "for the reasons set forth by this
6 Court in its oral ruling at the Hearing" (the "Proposed Order"). A true and correct copy of
7 the Proposed Order is attached hereto as Exhibit A.

8 3. The PBGC would not agree to the Proposed Order, instead requesting that
9 the Proposed Order set forth what the PBGC believes to be the crux of the Court's ruling.

10 4. The USACM Trust believes that (a) this Court's ruling was plainly set forth
11 at the conclusion of oral argument, (b) the PBGC's attempt to summarize that ruling does
12 not incorporate all relevant points, and (c) any attempt to include all relevant points would
13 amount to drafting a proposed written opinion, which this Court has indicated is likely not
14 to be forthcoming on this matter.

15 5. The USACM Trust therefore respectfully submits that this Court should
16 enter the Proposed Order.

17 RESPECTFULLY SUBMITTED May 15, 2008.

18
19 **LEWIS AND ROCA LLP**

20
21 By: /s/ RC (#6593)

22 Susan M. Freeman, AZ 4199 (*pro hac vice*)

23 Rob Charles, NV 6593

24 John Hinderaker, AZ 018024 (*pro hac vice*)

25 Anthony W. Austin, 10850

26 Counsel for USACM Liquidating Trust

-and-

LEWIS
AND
ROCA
LLP
LAWYERS

Edward J. Green (No. 6225069)
Geoffrey S. Goodman (No. 6272539)
FOLEY & LARDNER LLP
321 North Clark Street, Suite 2800
Chicago, IL 60610
Telephone: (312) 832-4500
Facsimile: (312) 832-4700

Copy of the foregoing mailed by First
Class, US Mail, postage prepaid or by e-
mail, on May 16, 2008 to the following
parties:

Frank A. Anderson
Erika E. Barnes
Pension Benefit Guaranty Corporation
1200 K. Street, NW Suite 340
Washington, DC 20005-3759
Anderson.frank@pbgc.gov
efile@pbgc.gov

Gerald M. Gordon
Gregory E. Garman
GORDON & SILVER, LTD.
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, NV 89109
gmg@gordonsilver.com
geg@gordonsilver.com

August B. Landis, Esq.
Assistant United States Trustee
Office of the U.S. Trustee
Las Vegas Field Office
300 Las Vegas Blvd., So., Suite 4300
Las Vegas, NV 89101
augie.landis@usdoj.gov

/s/ Christine E Laurel
Christine E Laurel
Lewis and Roca